Religious Norms and Social Questioning: Contextualising Gender Laws in 19th century Bengal

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I.

The Hindu Right (a political formation of Hindu religious nationalists who have, however, foresworn all commitment to political and economic sovereignty) is locked in a critical combat with socialist – secular history writing. It is interesting that it has ceded the ground of public debates and disputations entirely and that it establishes its points through administrative dictat and coercion: bans, dismissals, packing of institutions with its own men, censorship. It is also interesting that history writing and teaching continues to be an agenda of overwhelming importance to the Right even at a time when a fundamental remaking of Indian polity and economy is unfolding, and when its political and electoral ascendancy is under great strain. Why, at such a crucial juncture in its career, would a handful of historians engage and enrage this powerful political formation?

Without going into a detailed description of the Rightwing campaigns, and also without minimising the limits, problems and internal differences among Left historians, it is important to summarise the foremost ideological issues at stake. The Right seeks to eliminate all histories of social contradictions, dominance and subordination, self-criticism and resistance to power and exploitation, from its accounts of Indian past. The only kind of domination that it at all talks about are onslaughts from foreign sources alone – and here, of course, Indian Muslims, Indian Christians, and Indian Leftists are characterised as foreign, and as oppressive as the colonial state. Moreover, the form of onslaught that emerges as critical in their accounts, is

cultural critiques and changes that supposedly occurred under "foreign" impact: conversions, constraints – real or imagined – on religious practices, curbs on the power of Hindu religious and political establishments.

The effect of such a history is to project Hindus as an eternally unified community and eternally locked in mortal combat with foreign powers and ideas. The elimination of class caste, gender and cultural differences and struggles from its descriptions of the Hindu community protects the established leaders and power-holders from critiques and interrogations just as much as it reinforces the walls of suspicion against anything that is new or foreign in terms of self-critical social thinkng. This version of history is especially effective in banishing from sight, or delegitimising, all ideas about rights and entitlements of the poor, the exploited and the subordinated. For such social criticism is condemned as alien, as destructive of authentic Indian thinking. For example, the largescale conversions to "foreign" religions among low castes need no longer be explained in terms of caste inequities or a search of the humiliated for self-esteem: it can simply be described as an effect of Muslim and British tyranny, coercion and rule. In the current phase of globalisation, the rule of the Hindu Right has spectacularly reneged upon national economic autonomy. It refuses even token or minimal state responsibility for the survival of the poor. The critique of the ideology of rights as foreign, alien and subversive of culture is, therefore, particularly necessary and effective for its arguments.

There is, from very different sources, another powerful onslaught against the historian's vocation: that is the postmodern suspicion of History as particularly oriented towards the interests of the nation-state, as aligned to the world-imperialising designs of Post-Enlightenment western thinking. Although groups of avant-garde historians and social theorists in India flash around post modernist references as authorities, it is not clear that they do write post- modernist histories – if such a thing is at all possible. Many of them identify the historian's striving for total history with totalitarianism – a simple semantic confusion. Many others mistakenly believe that any problematisation of modernity is post modernism. Such confusions would not have been troublesome in themselves. What is seriously problematic

about their "postmodern" critique of modernity is what they choose to criticise. Increasingly, the entire genre problematises, indiscriminately and wholesale, the emancipatory agendas of post Enlightenment times that, with all their internal convolutions and tortuous contradictions, led to socialist thinkings, towards concepts of universal human rights and equality. It is not merely problematisation, but an entire rejection, in effect, of the very concepts. Postcolonial studies attach the critiques of emancipatory agendas to a critique of colonialism, as something directly conjugated from colonial intervention. Ironically, colonial rule is no longer seen as constrictive of rights, but as the source of rights. Again, since modern times coincided historically with colonial governance, all aspects of it are condemned and jettisoned by political theorists like Ashis Nandy. The obverse of this – in some cases – is an equally sweeping celebration of all that was pre-colonial. Colonialism is an enemy not because it exploited Indian people, but because it subverted Indian culture, changed indigenous meanings – to the extent that even resistance to colonialism is tainted with western meanings, as Partha Chatterjee asserts. Once again, the pre-modern/colonial becomes a space without faultlines, and once again, it is the criticism of social injustice that becomes suspect as an effect of colonial, Post-Enlightenment meanings.

II.

This brief and simplistic overview is necessary to underline the political problems I face in trying to construct an aspect of the history of colonial rule. It also underlines and explains my polemical intentions. In the rest of the paper I will sketch out a necessarily abbreviated argument about three very familiar – perhaps, over-familiar – colonial laws that altered older regulations about upper caste Hindu gender norms: laws prohibiting widow-burning, legalising widow remarriage, criminalising cohabitation with wives below the age of twelve. Except for the field of womens' studies, histories of colonial lawmaking rarely engage with this field. Feminist scholars, on the other hand, have focussed on these developments more as a preface to post-colonial changes, rather than as an aspect of colonial history. Moreover, historians of colonial lawmaking have developed excellent paradigms, sometimes combining E. P. Thompson and Foucault, to discuss collective resistance by poor people to threats to their survival, and the

criminalising of such effort by the colonial state. The three laws that I refer to, however, alter are very different things: they try to modify everyday relations within powerful lineages and families, they question norms formulated by brahman men. At the same time, such legal reformism did not come out of the good intentions of a progressive state apparatus. Rather, the laws arose out of prolonged and tenacious arguments within the emergent public sphere where Indian men – and, increasingly, a few women – argue among themselves. The state is often reluctant to act, it drags its feet and temporises, it is, at the most, an unwilling facilitator. Moreover, in the arguments and counter-arguments in the public sphere, alliances cut through communities. Muslim and Hindu orthodoxies stand in alliance at times, while some groups of missionaries work with some groups of liberal reformers among Hindus. If we go through state papers, we find that colonial officers – European as well as Indian – are deeply divided.

Arguments involve contentious understandings about state, culture and religion. They also reveal the beginnings of new understandings about love, marriage, and family. I think that in and through these arguments, there develops in the 19th century, a new discourse about the woman as a person with innate natural capabilities – moral and intellectual – which come to be seen as essentially ungendered. The new discourse unsettled very powerful and entrenched certainties about what is natural and what is unnatural for men and for women. Moreover, it asserted that the innate capabilities are blocked and thwarted by religious prescription.

Based on this version of blocked capabilities, developed another controversial conviction: a woman should not be made into an entirely embedded self, dispersed entirely among familial relations, according to prescriptive regulations. The great ancient lawgiver Manu had described the good woman as a profoundly non-autonomous self, ruled by father in childhood, by husband in youth, by son in old age. In the 19th century debates, on the contrary, she came to be re-envisaged as a person with a core of inviolate autonomy, possessing a cluster of entitlements and immunities, even when the family, the community or religion refused to accept them. The demand for the new laws stemmed from an understanding about

a necessary, autonomous core of female personhood that the state must underwrite.

I will relate the laws to Bengal, since all of them found a great deal of resonance there. I will talk more about what the laws came to do, the intended as well as the often-unintended long term consequences on social thinking that they generated through reformist activism, state intervention and the mechanism and procedure within the emergent public sphere. More than evaluating the actual, precise effects of the laws – they were often insignificant in themselves – I focus on the way in which they slowly altered the conditions and possibilities of thinking about men and women.

The laws spanned the entire century. They were called: Regulation xviii of 1829 for Declaring Suttee or the Burning or Burying Alive of Widows of Hindus Illegal and Punishable by Criminal Courts; Act xv of 1856 to Remove All Legal Obstacles to the Marriage of Hindu Widows; Age of Consent Act of 1891. All of them were primarily directed at upper caste Hindu women although large sections of upwardly mobile low castes also practised them. All addressed the death of women – her physical death in the case of the Suttee and the Age of Consent laws (a lot of infant-wives died of marital rape), and her sexual death in the case of the religious ban on widow remarriage. The practices that laws sought to alter were sanctioned by religious prescription: so lawmaking had to address and collide with established Hindu lifeworlds, sometimes with humanitarian arguments, but always with revisionist accounts of Hindu laws. At the same time, in all the controversies, the woman's consent was claimed and solicited by all contending groups. Never before in our history have gender regulations been debated and discussed in public by such a cross section of people; never before had the woman's need and consent been the cornerstone of arguments.

III.

Let us first look at the dominant parametres of the British legal framework. From the Hasting's Regulations of the 1770s, down to the Queen's Proclamation of 1858, colonial law asserted that in all matters pertaining to "succession, inheritance, marriage, caste and religious

institutions and usages", Hindus would be guided by their scripture and custom, Muslims by theirs, and so on. In other words, leaders of religious communities were vested with absolute control over domestic regulations. Existing practices would only be altered if it could be proved that they were contrary to superior religious prescription. The state sought interpreters of impeccable brahmanical birth and learning when they considered new laws. Rammohun Roy's version of the immolation practices carried weight because of his caste and his grasp of Hindu texts. Conversely, the low caste reformer Jotiba Phule's interpretations were never legally sanctioned for he lacked such privileges.

At the same time, in the decades between the 1820s and the 1850s, during the high noon of imperial self-confidence, Utilitarian interventionism could find some ground and there was a search for "enlightened Hindu opinion" which might even be opposed to orthodox versions of Hinduism. The Widow Remarriage Act belonged to this phase, and its formulation and reception indicated certain new beginnings in social reformism. The Absolute rights of the religious community were counterposed to certain new compulsions. Section 9, Regulation vii of 1832, for instance, promised: "In all cases (of disputes) the decision shall be governed by the principle of justice, equity, and good conscience". What if these considerations negated Hindu or Muslim prescription? Obviously, there was the hope that the two would always go together, that the particularities of culture would unproblematically mesh with universalisable imperatives of justice.

When the two flew apart, however, the new public sphere entered the processes of lawmaking, with its new print culture, its vernacular prose and newspapers, its new public theatre, where domestic laws were debated and displayed to large publics – a word that entered the Bengali vocabulary in the 19th century. Neo-literates, with a modicum of reading and writing skills, could follow the debates and even join them through the new print medium and the cheap newspapers and pamphlets that proliferated around these issues. And because they referred so persistently to the condition of women, it became a matter of interest to listen to what women had to say on the matter. A few women writers thus found a market for their social criticism, and even

the orthodoxy would encourage its women to write and publish. Whichever direction writings came from, a faultline appeared between the ethical which was considered to be universalisable an absolute moral imperative, and the prescriptive. What is interesting is that it was the prescriptive that strained to invent and display an ethical face. It could no longer take its authority for granted, it needed to supplement its commands with arguments based on benevolence and humanity.

The panic that followed the 1857 uprising – largely ascribed to the reformist interventions – put an end to the state intentions of promoting liberal reformism. On the other hand, nationalist reactions to growing racism and repression in state policies generated an unwillingness to probe into social power and religious prescription. The earlier self-interrogation of the liberal intelligentsia was further eroded since the economic power of a largely gentry-based intelligentsia was threatened by agrarian revolts and rural low caste protest movements in the late 19th century. The changed circumstances produced a very different reception of the Age of Consent Act. The liberal voice now was muted, arguments of cultural nationalism gained ascendancy, and a closure was firmly placed upon the will to change. The Hindu woman was seen as a culture-bearing person, rather than a rights-bearing one. On her acceptance of the harshness of religious discipline – so it was said by cultural nationalists – depended the future of nationhood, the survival of authentic cultural norms. If she preferred rights and autonomous selfhood, then Hindu religion and culture – already made fragile by the intrusions of an alien Power-Knowledge – would crumble, and the sway of colonisation would be complete. Threatened culture could only survive with a human sacrifice, and questions of justice were irrelevent to the context.

In the paper I would try to clarify the stances of various groups that reflected on these questions. By tracing the processes of reformism, lawmaking, and the resonances of laws in the public sphere, and by relating each different moment or phase to its individual context, I would like to contest and renew the old historiographical traditions on these events in ways that would set up resistances to nationalist and postmodernistic readings of

colonial histories.

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